

HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)
BUSINESS ASSOCIATE AGREEMENT

This BUSINESS ASSOCIATE AGREEMENT (the "Agreement") is entered into between _____ (the "Covered Entity") and Santa Clara County Individual Practice Association (the "Business Associate") effective April 14, 2003 ("Effective Date").

RECITALS

A. WHEREAS, in conformity with the regulations at 45 C.F.R. Parts 160-164 (the "Privacy Rules") Covered Entity will under the following conditions and provisions have access to, create and/or receive certain Protected Health Information as defined below; and

B. WHEREAS, Business Associate will have access to, create and/or receive certain Protected Health Information in conjunction with the services being provided under the Agreement, thus necessitating a written agreement that meets the applicable requirements of the Privacy Rules.

NOW, THEREFORE, Covered Entity and Business Associate agree as follows:

1. Definitions. The following terms shall have the meaning set forth below:

- (a) C.F.R. "C.F.R." means the Code of Federal Regulations.
- (b) Designated Record Set. "Designated Record Set" has the meaning assigned to such term in 45 CFR. 164.501.
- (c) Individual "Individual" shall have the same meaning as the term "individual" in 45 C.F.R. 164.501 and shall include a person who qualifies as personal representative in accordance with 45 C.F.R. 164.502 (g).
- (d) Protected Health Information "Protected Health Information" shall have the same meaning as the term "Protected Health Information", as defined by 45 C.F.R. 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- (e) Required By Law. "Required By Law" shall have the same meaning as the term "required by law" in 45 C.F.R. 164.501
- (f) Secretary. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.

2. Obligations and Activities of Business Associate.

- (a) Business Associate agrees to not use or further disclose Protected Health Information other than as permitted or required by this Agreement or as Required By Law. Business Associate shall also comply with any further limitations on uses and disclosures agreed by Covered Entity in accordance with 45 C.F.R. 164.522 provided that such agreed upon limitations have been communicated to Business Associate in accordance with Section 4.1(c) of this Agreement. Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner which would not be permissible under the Privacy Rules.
- (b) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- (c) Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware.
- (d) Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

(e) Business Associate agrees to provide access, at the request of Covered Entity, and in the time and manner reasonably designated by Covered Entity, to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 C.F.R. 164.524. If Business Associate provides copies or summaries of Protected Health Information to an Individual it may impose a reasonable, cost-based fee in accordance with 45 C.F.R. 164.524 (c)(4).

(f) Business Associate agrees to make available Protected Health Information for amendment and incorporate any amendments to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. 164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity.

(g) Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.

(h) Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. 164.528.

(i) Business Associate agrees to provide to Covered Entity, in the time and manner reasonably designated by Covered Entity, the information collected in accordance with Section 2(h) of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. 164.528.

(j) Business Associate acknowledges that it shall request from the Covered Entity and so disclose to its affiliates, subsidiaries, agents and subcontractors or other third parties, only the minimum Protected Health Information necessary to perform or fulfill a specific function required or permitted hereunder.

(k) If Business Associate conducts any Standard Transactions (as defined in 45 C.F.R. Part 162) on behalf of Covered Entity, Business Associate shall comply with the applicable requirements of 45 C.F.R. Part 162.

3. Permitted Uses and Disclosures by Business Associate.

3.1 General Use and Disclosure. Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform its obligations under the Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.

3.2 Specific Use and Disclosure Provisions.

(a) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

(b) Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(c) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide data aggregation services to Covered Entity as permitted by 42 C.F.R. 164.504(e)(2)(i)(B).

(d) Business Associate may use Protected Health Information to report violation of law to appropriate Federal and State authorities, consistent with 42 C.F.R. 164.502 (j)(1).

4. Obligations of Covered Entity.

4.1 Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions.

(a) Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 C.F.R. 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.

(b) Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes affect Business Associate's use and disclosure of Protected Health Information.

(c) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 C.F.R. 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

4.2 Permissible Requests by Covered Entity. Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

5 Term and Termination.

(a) Term. The provisions of this Agreement shall take effect April 14, 2003, and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the provisions in this Section.

(b) Termination for Cause. Without limiting the termination rights of the parties pursuant to the Agreement and upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:

- i. Provide an opportunity for Business Associate to cure the breach or end the violation and terminate the Agreement, if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;
- ii. Immediately terminate the Agreement, if cure of such breach is not possible;
- iii. If neither termination nor cure are feasible, Covered Entity shall report the violation to the Secretary.

(c) Effect of Termination.

(1) Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.

(2) In the event the Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protection of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business

Associate maintains such Protected Health Information.

6. Notices. Any notices or communications to be given hereunder this Agreement, shall be made to the address and/or fax to the fax numbers given below:

If to Business Associate, to:
SCCIPA/ PPMSI
1165 Triton Drive
Foster City, CA 94404

Attention: Director of Provider Services

If to Covered Entity, to:

Attention: _____

Each party named above may change its address upon thirty (30) days written notice to the other party.

7. Miscellaneous.

(a) Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.

(b) Amendment. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for the parties to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996. Any such amendments to this Agreement proposed by either party shall not be effective unless mutually agreed to in writing by both parties.

(c) Survival. The respective rights and obligations of Business Associate under section 5(c) and 6 of this Agreement shall survive the termination of this Agreement.

(d) Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule. In the event of any inconsistency or conflict between this Agreement and the Agreement, the terms, provisions and conditions of this Agreement shall govern and control.

(e) No third party beneficiary. Nothing express or implied in this Agreement or in the Agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties and the respective successors or assigns of the parties, any rights, remedies, obligations, or liabilities whatsoever.

(f) Governing Law. This Agreement shall be governed by and construed in accordance with the same internal laws as that of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

COVERED ENTITY

BUSINESS ASSOCIATE

_____ *Signature*



By: _____ *Print*

M. Lawrence Bonham, MD
President & Chief Executive Officer
Santa Clara County IPA

Title: _____

Business: _____